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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,268	07/23/2001	Thomas Eckel	Mo6438 LeA 34,675	4109

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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/911,268
Filing Date: July 23, 2001
Appellant(s): ECKEL ET AL

James R. Franks
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07 Feb. 2005.

A statement identifying the real party in interest is contained in the brief.

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

The statement of the status of the claims contained in the brief is correct. This appeal involves claims 1-17.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The summary of invention contained in the brief is correct.

The appellant's statement of the issues in the brief is correct.

Appellant's brief includes a statement that claims 1-17 stand or fall together.

The copy of the appealed claims contained in the Appendix to the brief is correct.

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

6,569,930	Eckel et al	5-2203
3,919,353	Castelnuovo et al	11-1975
EP 0 771 851	Gaggar et al	5-1997

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Eckel et al (US 6,569,930).

Eckel et al (US'930) teach a flame resistant composition comprising aromatic polycarbonate, graft polymer, a specifically structured phosphorous compound, fluorinated polyolefin and inorganic compound in abstract and table on col. 13 and at col. 2, line 27 to col. 3, line 12. The instant phosphorous compound is taught at col. 8, lines 1-44 and col. 12, lines 15-28 (compound D.1). Said compound D.1 has a definite chemical structure and thus is from of other homolog or derivative. Therefore, said compound D.1 meets the instant phosphorous compound having less than 1 wt.% of

isopropenylphenyl phosphate (IPP). The instant graft polymer is taught at cols. 5-6, and the graft base of a preferred graft polymer in lines 21-20 has the instant Tg as evidenced by claim 1. Various additives and molded articles are taught at col. 10, lines 36-47.

Thus, the instant invention lacks novelty.

Claims 1-17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gaggar et al.

Gaggar et al teach the instant composition in abstract and claims. The instant phosphorous compound is taught at page 6, lines 35-40 wherein the preferred bisphenol A is taught as R^9. Said preferred bisphenol A as R^9 does not include the instantly recited isopropenylphenyl phosphate. ABS graft polymer is seen in table 1.

Thus, the instant invention lacks novelty.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckel et al (US 6,569,930) in view of Castelnuovo et al.

Eckel et al teach the graft polymer based on US Pat. 3,919,353 at the bottom of page 10, and said US Pat. 3,919,353 teaches Tg of less than 10°C in table of col. 3 and at col. 6, line 30. Note that homopolymers of both methacrylate and styrene monomer components of the MBS have Tg of more than 100°C, and thus the graft base, polybutadiene, obviously meets the instant Tg of less than 10°C.

It would have been obvious to one skIled in the art t the time of invention to utilize a graft polymer with a graft base having Tg of less than 10°C in Eckel et al with teaching of Castelnuovo et al since Eckel et al teach Castelnuovo et al.

Response to appellant's argument

Appellants assert that the prior art does not disclose, teach or suggest polycarbonate compositions that include a phosphorous compound according to appellants' formula-(I) which contains less than 1 percent by weight of IPP. The phosphorous compound D.1 of Eckel et al would be pure as claimed and is not a commercial product since Eckel et al teach only D.2 and D.3 as commercial products. Appellants also point to the Declaration filed on March 8, 2004 wherein the contents of IPP for commercial products are shown. However, the instant phosphorous compound is also a commercial product (NcendX P-30), and thus appellants' assertion that commercially available phosphorous compounds contain a higher amount of IPP has little probative value. Besides, said Declaration failed to show that the phosphorous compound D.1 of Eckel et al contains the IPP higher than 1 percent by weight and is a commercial product.

Gaggar et al prefers the bisphenol A as R^9 excluding the instantly recited IPP higher than 1 percent by weight.

Rejections based on Eckel et al (US 6,441,068) and Norris et al (US 4,246,169) are withdrawn due to redundancy.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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THY/
May 5, 2005

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